

November 1, 2005

To the Honorable, the City Council:

Subject: Recommendation on the Planning Board Petition to Amend the Massachusetts Avenue Overlay District.

Recommendation. The Planning Board recommends adoption of the Petition as filed with minor changes to clarify ambiguities in language and intent identified during the hearing process. The modified language is attached.

Discussion

The Petition proposes to modify the Overlay District through four new initiatives:

1. Establishment of a set of objectives to guide decision making in the Massachusetts Avenue Overlay District by both the Planning Board and property owners.
2. Clarification of a number of urban design provisions already in the Ordinance by modifying (sometimes increasing, sometimes limiting) their scope and tailoring them to the district more carefully. Among the provisions affected are: requirements imposing, for a wider range of uses, a 50% glass requirement on the first floor façade, increasing the required depth of active use on the ground floor to 40 ft, requiring all first floor uses but housing to be at grade.
3. Introduction of a special permit provision by which existing non-conforming retail businesses in residential districts south of Wendell Street can be reestablished if the business' site is redeveloped.
4. Creation of incentives to encourage the inclusion of retail and similar, publicly accessible uses on ground floors of new residential and dormitory buildings.

As suggested in testimony at the public hearings held on this matter, there is general and widespread support for the first two initiatives, which will apply to the entire Overlay District.

Some residents have expressed opposition to the third and fourth initiatives, which apply variously only to the portions of the Overlay District from Porter Square south to Everett Street. Residents have suggested that the special permit mechanism proposed (to facilitate the reestablishment of retail activity in the residential districts below Wendell Street) is inadequately responsive to their objectives. On the proposal to institute FAR incentives to encourage residential developers and the universities to incorporate retail activity on the ground floor of future housing and dormitory buildings, some residents have expressed the

concern that the regulation may encourage not retail activity, but expansion of the university presence on lots currently home to successful stores and shops.

In both instances the Planning Board respectfully disagrees. The proposed regulations, in the Board's view, are nuanced, targeted to the problems identified, and limited in scope. The Board feels the proposed regulation changes are probably necessary if the objective of an active ground floor is to be achieved in new residential and dormitory buildings.

In the first instance, the Wendell to Everett residential districts have an historic residential and institutional ambience of real value, which is unique along the Avenue even with the several lots that contain cherished and neighborly retail stores. That unique feel could be inadvertently damaged without the careful design of any replacement retail frontage that might be constructed in the future; a special permit process would allow adequate review of any new retail construction.

In the second instance, neighbors have expressed the fear that the incentives proposed for institutional construction – that any specific portion of an institutional building containing active ground floor retail and similar uses be exempt from inclusion in the calculation of the Gross Floor Area allowed on a site – will encourage institutions to acquire even more land and displace currently viable retail buildings with university facilities. For a number of reasons the Board does not believe that will be the case.

The institutional incentive is only provided to buildings principally accommodating dormitories (a building serving as classrooms, faculty offices or academic research is not eligible). Except for a very limited range of institutional uses (like art galleries, libraries, theaters and museums) the ground floor uses must be non-academic retail stores and similar office uses. Therefore, the GFA bonus does not, except where the art galleries, museums, and libraries mentioned above are accommodated, increase the potential amount of academic space available on a lot, a common reason for institutions to acquire additional property. If the GFA bonus is taken, the range of permitted uses is very limited and not expandable, except through an amendment to the Zoning Ordinance; a variance or special permit cannot accomplish an increase in the range of uses allowed.

Without the GFA exemption, providing retail uses on the ground floor of a dormitory building will, square foot for square foot and more, reduce the space available on the lot for dormitory rooms. In such circumstances there will be strong pressure not to provide the desired retail activity because it would come at such a cost to the academic program. Finally, most of the lots now thriving as retail venues along the Avenue are small and are already near or exceed, in some cases significantly, the non-residential density permitted in the business districts. In those cases there is little reason to tear down such buildings; the modest incentive suggested here would not alter that fact. Furthermore, institutions are now free to acquire any building along the Avenue and reuse it for any academic purpose they choose; the City may not prevent that from occurring and the incentives proposed here neither encourage nor prohibit such action.

The neighbors have suggested that a more direct approach might be to mandate the desired retail, or in a variation on that idea, require that any non-residential space currently on a lot be replaced in kind should the lot be redeveloped. While at first blush such suggestions seem to provide a more straightforward approach to the objective being advanced in this zoning petition, significant policy and regulatory complications do arise.

Any proposal must define the kinds of retail activities to be required in the future and how existing non-residential uses are allowed to change in existing buildings in the future. And as proposed by the Planning Board, regulations need to ensure that retail space in new buildings is well designed and appropriately located. Such requirements are fairly simple to implement.

However, other complications arise and need to be fully appreciated. A regulation that merely mandates the replacement of existing retail does not secure retail activity in the future where lots are currently vacant. Mandating ground floor retail on all lots might complicate matters when the owner of an existing residential building wishes to build an addition. Mandating retail imposes a uniformity and a certain inflexibility in use and development pattern that actually does not exist today; the existing variation in character from lot to lot is one of the delights of the walking experience along the Avenue. Imposing a limited range of allowed uses on property owners always complicates the management of a business, particularly for small property owners who need to be nimble in responding as markets and customer demands change.

Finally, on small sites or commercial sites developed well beyond current zoning limits, mandating retail activities to the exclusion of institutional and university uses may have the effect of prohibiting institutional uses on a site, which state law does not permit Cambridge to do in business districts.

Respectfully submitted for the Planning Board,

Barbara Shaw, Chair

Modified Petition Text as Recommended by the Planning Board

Text of the current Overlay District

Text proposed to be added or ~~deleted~~ in the original Petition

Additional text proposed to be added or ~~deleted~~ in the Planning Board's final recommendation

20.100 MASSACHUSETTS AVENUE OVERLAY DISTRICT

20.101 *Establishment and Scope.* There is hereby established the Massachusetts Avenue Overlay District which shall be governed by the regulations and procedures specified in this Section 20.100. It is the intent of this section that these regulations will apply to the area described generally as Northern Massachusetts Avenue and certain abutting portions of the neighborhood abutting it.

20.102 *Purpose.* It is the purpose of this Section 20.100 to augment base zoning regulations in the District in order to create a more harmonious and consistent image for the development along the Avenue and adjacent areas, to encourage good building design and site development which enhances the pedestrian amenities along the Avenue, to ensure that changes along the Avenue are compatible with the scale and character of the abutting neighborhoods, to encourage the retention of existing buildings of historic value and uses ~~which~~ that serve the abutting neighborhoods, and to discourage new development inappropriate in both scale and design.

The following statement of objectives played an important role in developing an understanding of the proposed regulations during discussions with the Planning Board and with members of the area community. We propose that they be included in the text of the ordinance.

20.102.1 *Objectives.* The regulations specified herein are intended to serve the following planning objectives:

1. Encourage, support and maintain the existing wide diversity of building forms, uses, and site development patterns present in the commercial districts along the Avenue.

2. When new buildings are created, or when existing buildings are renovated or upgraded, encourage the creation of an interesting and engaging public face to the street, particularly at the ground floor.

3. Encourage the retention of the existing wide range of retail and consumer service establishments on the ground floor of buildings along the Avenue, and encourage the creation of ground-floor retail and consumer service uses in new buildings. In particular, encourage such active public uses at the ground floor where institutional or residential uses are expected to be the principal activities in the remainder of the building.

4. Encourage additional residential uses along the Avenue, but not at the expense of displacing existing or potential future retail storefronts.

5. Be open to a wide range of building forms and site development characteristics, including street-wall buildings and landscaped front yards, as long each is friendly to pedestrians and does not lead, cumulatively, to the loss of the existing pattern of shop fronts along Massachusetts Avenue.

6. Encourage the retention and preservation of the remaining inventory of wood framed freestanding structures, which reflect the Avenue's past as a fashionable residential street.

7. To the extent feasible, encourage enterprises that serve the needs of residents of the adjacent neighborhoods and nearby university populations. Encourage walking and public transportation as the primary means of accessing businesses along Massachusetts Avenue.

20.103 *Applicability.* The Massachusetts Avenue Overlay District shall be an overlay district on the zoning map established by Section 3.20.

The following changes are meant to clarify some minor ambiguities.

20.103.1 The buildings and land uses within said district shall be controlled by the pertinent regulations ~~within of~~ the applicable base zoning district, except as they may be modified by the requirements of this Section 20.100, which shall apply in addition to regulations imposed by the base zoning ~~map designations districts. Where the base zoning regulations differ from the requirements of this Section 20.100 the stricter provisions shall apply.~~

20.104 *Dimensional and Parking Standards in the Massachusetts Avenue Overlay District.*

20.104.1 *Maximum Height.* The maximum height of any structure in the Overlay District shall be sixty (60) feet or the height applicable in the base district, whichever is less.

20.104.2 *Modifications to the Definition of Gross Floor Area.* Notwithstanding the definition of Gross Floor Area contained in Article 2.000 - Definitions, the following shall not be included ~~as part in the calculation~~ in the calculation of the gross floor area of any building in the Overlay District:

1. Enclosed bays and other small projections from the principal wall plane of a building normally included as gross floor area, provided they are three (3) feet or less in depth and further provided that the following conditions are met:

- a. The maximum width of the projection does not exceed six (6) feet in length;
- b. No more than fifty (50) percent of the area of each principal wall plane is covered with such projections.

20.104.3 *Modifications to the Application of Floor Area Ratio (FAR) Limitations.*

The following proposed text says that if a specific non-residential use (see included list of eligible uses) is included at the ground floor of a primarily residential building, within

a 40-foot depth from the front façade, then that non-residential use is allowed at the maximum FAR applied to residential uses in that district (2.00 in the Business C district and 1.75 in the Business A-2 district). This proposed text also says that if such a non-residential use is included on the ground floor of a dormitory building, within a 40-foot depth from the front façade, then it does not have to be included in the calculation of Gross Floor Area in meeting the FAR limitation – effectively, retail space could be included without reducing the amount of floor area allowed for dormitory space.

The following modifications to the application of FAR limitations specified in this Section 20.104.3 (and the provisions set forth in Sections 20.104.4 and 20.104.5) shall apply only in the Business C zoning district and in the portion of the Business A-2 zoning district extending along Massachusetts Avenue from Arlington Street at the north to Wendell Street at the south, and are intended to encourage the provision of active ground floor uses where the principal use of a building is a residential or dormitory use:

1. Where the principal use of a building is residential as permitted in Section 4.31 (a) – (h), the maximum FAR applicable to residential uses in its zoning district shall also be applied to that portion of the building occupied by non-residential uses on the ground floor of the building, subject to the limitations listed below in Subparagraphs (a) – (h) of this Section 20.104.3.

2. Where the principal use of a building is a dormitory as permitted Section 4.33 (b) (7), no FAR limit shall be applied to that portion of the building occupied by non-residential uses on the ground floor of the building (i.e., the area devoted to non-residential uses shall not be included in the calculation of Gross Floor Area on the lot), subject to the limitations listed below in Subparagraphs (a) – (h) of this Section 20.104.3. **[The exemption for certain Gross Floor Area shall apply only for the limited purpose of determining the amount of building area allowed on a lot as regulated by the applicable FAR. For any other provision of this Overlay District or the Zoning Ordinance that is based on a determination of Gross Floor Area (as, for instance, required parking or limits on the size of a retail establishment) the actual Gross Floor Area in the building shall be used].**

The FAR modifications in Paragraphs (1) and (2) above shall be subject to the following requirements and limitations:

a. At least fifty (50) percent of the Gross Floor Area of the building is occupied by residential or dormitory uses enumerated above.

b. All non-residential uses in the building ~~shall be~~ **are** limited to the first floor and basement of the building.

c. The non-residential portion of the building ~~shall be~~ **is** occupied by any one **or combination** of the following uses as they are permitted in the applicable base business district: Retail Business and consumer service establishments – Section 4.35 a, b, c, d, e, f, g, h, i, k, l, o, q, and r; Office and Laboratory Uses - Section 4.34, a, b, c, and e (those portions of a bank providing retail banking services to the general

public); and Institutional Uses – Section 4.56 a (4), c (4), f (1) and (2), g (3) (5) and (6), and i (2). No use variance may be granted to permit other uses in the subject Gross Floor Area. The uses established shall be open to the general public during normal business hours.

d. The non-residential portion of the building to which the FAR modification is applied shall be located on the ground floor of the building and shall have a depth of no greater than forty (40) feet from the building's Principal Front Wall Plane along the length of that portion of the building facing a street. Where a lot abuts more than one street, the **FAR** modification shall only be applied to **non-residential space facing a single street**. Additional non-residential uses may be located in the building but they shall be subject to the FAR limitations normally applied to any non-residential uses in the applicable base zoning district, **and but shall also** be subject to the limitations of Subparagraphs (a) and (b) above.

e. No individual non-residential establishment **to which the FAR modification applies** may exceed 10,000 square feet in area. The Planning Board may grant a special permit to waive this limitation.

f. The Principal Front Wall Plane of the building shall be located no further than twenty-five feet from the street line.

g. The floor-to-floor height of the first floor **of that portion of a building newly constructed to accommodate the uses to which the FAR modification applies** shall be a minimum of fifteen (15) feet.

h. The owner of the property shall cause the use, lot and building limitations contained herein and a description of the affected Gross Floor Area to be recorded in the Registry of Deeds of Middlesex County in a form satisfactory to the City. Evidence of such recording shall be required before any Occupancy Permit shall be issued for the Gross Floor Area affected.

20.104.4 Waiver of Parking Requirement

As an additional incentive to encourage retail uses on the ground floor, the following proposed text would waive any accessory parking that might be required for the non-residential use.

For that area of a building employing the FAR modifications of Section 20.104.3 above, no accessory off street parking shall be required, notwithstanding any provision of Article 6.000.

20.104.5 Waiver of Yard Requirements

Modest front and side yards (5-10 feet) might be required on some lots by the Business A-2 district regulations. As another incentive that might encourage active ground floor uses, the following proposed text would waive those requirements. The minimum 10-foot setback from a lot in a residential district, required universally in the Ordinance,

would continue to apply.

For a building employing the FAR provisions of Section 20.104.3 above, the Minimum Front and Side Yard requirements of the Business A-2 district, as set forth in Table 5-3, shall not apply. However, the provisions of Section 5.40 shall continue to apply.

20.105 *Restrictions in Required and/or Provided Setbacks.* That area between the principal wall plane of a building and a public street or public park whether required or provided shall be devoted to Green Area Open Space as defined in Article 2.000 of this Ordinance, an expansion of the adjacent public sidewalk, park, or other landscaped or paved area devoted exclusively to pedestrian use and extending along the entire length of the lot facing the street or park. Areas devoted to vehicular use are prohibited from this area with the exception of access drives to parking facilities located elsewhere on the site and which shall be limited to a total of thirty (30) feet of width for each one hundred (100) feet of lot frontage.

The required Green Area Open Space, landscaping or other paved area devoted to pedestrian uses shall be located at the mean grade of the relevant public street or open space at the property line unless an exception is granted under the provisions of Section 20.108 of this Section 20.100.

On that rare site in the Overlay District where there are three or four abutting streets (like the Porter Square Shopping Center), this added provision would allow some surface parking between the building and some side streets, where the current regulations would essentially prohibit it completely on the lot.

Where a building fronts on more than two streets, the provisions of this Section 20.105 shall apply to no more than two streets, which shall include the principal arterial streets abutting the lot.

20.106 *Use Restrictions.*

The following set of proposed changes would require that all uses on the first floor of a building (generally the frontage facing Massachusetts Avenue) would be required to be at grade, with the exception of ground-floor residential and dormitory uses. Currently, only retail uses are required to be at grade. They would also require that the use on the ground floor of a building must have a depth of at least forty feet, while currently that use can have a depth of twenty feet from the front wall of the building.

20.106.1 The ground (first) floor of that portion of a building facing a public street or public park shall consist of Gross Floor Area devoted to any one or combination of the following uses to the extent the use is permitted in the base district. Residential (Section 4.31), Office (Section 4.34), retail business (Section 4.35), Institutional (Section 4.33), but specifically excluding Gross Floor Area in structured parking ~~counted as Gross Floor Area~~, meeting the following conditions:

1. At least eighty (80) percent of the floor elevation of the ground (first) floor shall be ~~no higher than the four (4) feet above~~ at the mean grade of the adjacent public sidewalk ~~or public park, at the property line,~~ except that ~~Retail Business uses in new construction shall~~ residential and dormitory uses may be located ~~at~~ up to four feet above mean grade;
2. The use shall have a depth of at least ~~twenty (20)~~ forty (40) feet;
3. Where a lot fronts on two or more streets the provisions of this Section 11.106 shall apply only to the principal arterial street frontage provided the remainder of the ground floor of the building facing the public street shall be screened with a permanent wall in materials equal in quality to those of the rest of the building and having a minimum opacity of fifty (50) percent.
4. One parking space for each unit in a Townhouse Development shall be exempt from the limitations of this Section 20.106.

This additional measure ensures that existing buildings that do not conform to the above use standards do not need to be altered.

5. These provisions shall apply to any building constructed after October 6, 1986 (the effective date of this Section 20.100); however, a building constructed before October 6, 1986, which in whole or in part meets the requirements of this Section 20.106.1, shall not be altered so as to increase the degree to which it does not comply with this Section 20.106.1.

The following proposed text would allow existing retail uses in the residentially-zoned parts of the Mass Ave Overlay District to be reestablished if their sites were redeveloped.

20.106.2 *Retail Uses in Residential Districts.* Where a lot in a Residence C-2 or C-2A zoning district contains Gross Floor Area devoted to any retail use in Section 4.35 or office use in Section 4.34, which use was legally established on the lot prior to October 6, 1986 (the effective date of this Section 20.100) the equivalent Gross Floor Area may be (a) reestablished on that lot in any new construction on the site, or (b) may be established on any other lot within the Overlay District in a Residence C-2 or C-2A district, and (c) when reestablished or relocated may contain any retail use permitted in Section 4.35 in a BA-2 district. Such reestablished Gross Floor Area shall be permitted after the grant of a special permit from the Planning Board, subject to the following conditions and limitations:

1. The area devoted to retail use is located on the ground floor or basement of a building.
2. The retail area is so designed and located as to have no significant negative impact on adjacent residential or other uses permitted in the residential district, or adjacent neighborhood residential districts.

3. The area of such retail use does not exceed that area of retail or office use previously on the site on which it had been located or from which it is being transferred.

4. The total Gross Floor Area on the lot for all uses does not exceed that permitted in the applicable base residential district.

In permitting the establishment of retail Gross Floor Area in a new building, the Planning Board may waive the yard requirements normally applicable in the residential district for that portion of the building containing the retail uses. Signs for the retail uses shall be subject to the provisions of Section 7.16.21 (C). Where Gross Floor Area is to be relocated to another lot, the Board may in its conditions permit the retail operations at the old location to continue until the Gross Floor Area at the new location is available for occupancy.

The issue of abandonment of the retail activity, regulated in the following paragraph, was raised in earlier discussions. While not essential, the provision is consistent with the general premise of this section – that the area affected should remain essentially residential and institutional in nature, and in the event that retail activity were converted to other uses, and thus lost, that outcome would be consistent with the policy premise that these residential districts (C-2 and C-2A) are appropriate. Furthermore, if any area of retail activity were abandoned for many years, it would likely be difficult to determine how much retail space existed far back in the past.

Any retail use reestablished or relocated under the provisions of this Section 20.106.2 may be further reestablished or relocated at any time in the future after the issuance of an additional special permit. However, once the retail use is abandoned as determined by the provisions of Article 8.000, it may not be thereafter reestablished under the provisions of this Section 20.106.2.

20.107 *Design Standards*

The following proposed changes would require that all buildings in the Overlay district, with the exception of housing, adhere to a set of design standards that are intended to promote a lively streetscape. However, the text also waives these requirements where the ground floors of residential structures that may have historic value are converted to non-residential use, and the required standards might affect the building's historic character or architectural integrity.

20.107.1 Building facades. Building facades shall be designed to enhance the visual quality of the Overlay District, create an environment pleasant and inviting for the pedestrian and compatible with the residential neighborhoods in close proximity to the district. The following standards shall apply to any building constructed after October 6, 1986 (the effective date of this Section 20.100); a building constructed before October 6, 1986, which in whole or in part meets the requirements of this Section 20.107.1, shall not be altered so as to increase the degree to which it does not comply with this Section 20.107.1:

1. Principal building entrances shall face Massachusetts Avenue where a lot abuts the Avenue;
2. ~~Where office and/or retail uses are~~ For any uses except residential use, Section 4.31 (a) – (h), accommodated on the ground floor, each separately leased space shall have an individual public entrance onto the abutting street where any portion of the space fronts towards the street;

The following proposed changes would require that all ground-floor facades, except those containing residential uses, must consist of at least 50% clear glass. Some additional changes are included to clarify some ambiguities or unstated assumptions regarding the application of the minimum glass area requirement.

3. Facades facing (a) a public street; (b) a public park located on an abutting lot; or (c) a designated city landmark building, or building in a local historic district or neighborhood conservation district, located on an abutting lot, shall consist of a minimum twenty-five (25) percent clear glass in total for the façade ~~with. On the ground floor façade facing a street~~ clear glass shall be increased to fifty (50) percent ~~on the ground floor where retail and office uses are established except where residential uses, Section 4.31 (a) – (h), are accommodated; the remainder of the façade shall continue to meet the minimum twenty-five (25) percent requirement. Where a building faces two or more streets, the minimum fifty (50) percent glass requirement shall apply to no more than two streets.~~ The maximum amount of clear glass permitted shall be seventy-five (75) percent of the façade. Reflective and opaque glass shall be prohibited.

For purposes of this Paragraph 3, where reference is made to the area of a façade of any given floor, the vertical dimension of that floor shall be measured from the finished interior floor to the underside of the structural joists of the floor above. The horizontal dimension shall be measured to the centerline of the demising walls of a separately leased space, or to the exterior wall of the building as applicable. Where reference is made to the entire façade, the vertical dimension shall be measured from the mean grade of the façade facing the street (or other feature) to the underside of the structural rafters supporting the roof.

Where the façade of the ground floor is required to have a minimum of 50% clear glass, that glass shall be distributed on the façade such that at least seventy-five percent of the requirement is located below the midpoint between the finished floor and the underside of the joists above.

- 20.108** Divergence from the standards specified in Sections 20.105 – 20.107 may be allowed by issuance of a special permit from the Planning Board. The Board shall grant such a permit upon its determination that the development proposed will better serve the objectives of this Section 20.100 than if the standards were followed and that the criteria specified in Section 10.43 will be satisfied.

The Board shall be guided in its determination by *Northern Massachusetts Avenue Urban Design Guidelines* and other such guidelines as may be established for this portion of Massachusetts Avenue. This Section 20.108 is intended for variations from the standards which may be appropriate in specific locations and circumstances and where careful design detail is a controlling factor.

20.109 *The Massachusetts Avenue Overlay District shall be considered an area of special planning concern.* Notwithstanding the provisions in Section 19.43.1 – Applicability of Large Project Review Procedure, in the Massachusetts Avenue Overlay District the Large Project Review Procedure shall apply to any development proposal containing ~~more than~~ two thousand (2,000) square feet or more of Gross Floor Area but less than fifty thousand (50,000) square feet, unless such development is exempt by virtue of the provisions of Section 19.45.

20.110 *Nonconforming structures.* Notwithstanding the provisions of Section 8.23, that portion of a legal, nonconforming structure lying within the Massachusetts Avenue Overlay District which is destroyed or damaged by fire, explosion, or other catastrophe may be rebuilt or restored and used again, in the same way as it had been legally used immediately before the damage, without limit as to cost of such rebuilding or restoring provided the following conditions are met:

1. Any restoration or rebuilding shall commence within twelve (12) months after the catastrophe;
2. The structure shall be restored or rebuilt to the same design, including materials and design details as existed previously; or should the restoration not be feasible necessitating that the structure be rebuilt to a different design, said design shall be at least equal to the original design of the structure in quality of materials used, the quantity and quality of design details employed, and the compatibility of the site design with abutting properties;
3. The Community Development Department shall certify to the Superintendent of Buildings that the above conditions have been met.

With respect to the comparability of newly designed buildings, the Community Development Department shall consult the Cambridge Historical Commission for structures greater than fifty (50) years old. Should the Community Development Department find that said conditions have not been met the restoring or rebuilding shall require a special permit from the Board of Zoning Appeal.

The restored or rebuilt structure shall in no aspect increase the nonconforming nature of the original structure; nothing in this Section 20.110, however, shall prohibit a rebuilding or restoring which reduces the nonconforming nature of the original structure.